

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS LIABILITY  
LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Geoffrey Bowman, *et al.*

v. Civil No. 06-96 (DWF/AJB)

Guidant Corporation, *et al.*

**ORDER REGARDING  
GUIDANT'S MOTION  
TO DISMISS**

Guidant filed a Motion to Compel Production of Completed Fact Sheets and Executed Medical Record Authorizations (MDL No. 05-1708 (DWF/AJB), Doc. No. 548; Civ. No. 06-96 (DWF/AJB), Doc. No. 3) on September 1, 2006. On September 6, 2006, the Court ordered Bowman to submit an opposition to Guidant's Motion no later than September 13, 2006. (MDL No. 05-1708 (DWF/AJB), Doc. No. 562; Civ. No. 06-96 (DWF/AJB), Doc. No. 6.) He failed to do so.

On September 18, 2006, the Court found that Bowman's discovery failures had unduly prejudiced Guidant's ability to prepare its defense and threatened the efficient and expeditious operation of this MDL. (MDL No. 05-1708 (DWF/AJB), Doc. No. 628; Civ. No. 06-96 (DWF/AJB), Doc. No. 7.) The Court ordered Bowman to provide Guidant with properly executed medical records authorizations and a fully completed PFS no later than ten (10) days from the date of the September 18 Order, and under the Court's

inherent powers, it ordered Bowman to reimburse Guidant \$1,000 for reasonable attorney fees. He failed to do so.

On October 9, 2006, Guidant filed a Motion to Dismiss for Failure to Comply with the Court's September 18, 2006 Order (MDL No. 05-1708 (DWF/AJB), Doc. No. 702; Civ. No. 06-96 (DWF/AJB), Doc. No. 8). Guidant did not request oral argument. On that same date, Bowman emailed the Court. In that email, he admitted that at least one of his attorneys had received notice of Guidant's motions and the Court's Orders. He stated that he would "of course, provide the requested materials at once," and he noted that he had sent his CM/EFC registration to the Court to "avoid any future such miscommunications."<sup>1</sup>

The Court has discretion to dismiss a case with prejudice when a party fails to comply with a court's order or permit discovery. *See* Fed. R. Civ. P. 37(b)(2) and 41(b); *Hutchins v. A.G. Edwards & Sons, Inc.*, 116 F.3d 1256, 1260 (8th Cir. 1997). Bowman's failures to comply with the Court's Orders demonstrate a pattern of intentional delay. Moreover, Bowman's repeated failures to comply with the Court's Orders and respond to Guidant's motions have caused Guidant to incur unnecessary attorney fees and expenses.

Based on a review of the record and recognizing that dismissal is an extreme sanction, the Court hereby orders:

1. Bowman shall comply with the Court's September 18, 2006 Order and respond to Guidant's motion to dismiss no later than seven (7) days from the date of this

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<sup>1</sup> Pursuant to PTO No. 2, Bowman should have registered with the Court in January 2006.

Order. If Bowman fails to do so, the Court will find that Bowman acted in bad faith for failing to comply with the Court's January 31, September 6, September 18, and October 10, 2006 Orders. The Court will then immediately dismiss Bowman's case with prejudice.

2. Federal courts possess the inherent power to sanction misconduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). As a direct result of Bowman's disregard of the Court's September 18, 2006 Order, Guidant has incurred additional unnecessary attorney fees and expenses in filing its motion to dismiss. For that reason and under the Court's inherent powers, the Court orders Bowman to reimburse Guidant \$1,000, in addition to the \$1,000 sanction imposed in the September 18, 2006 Order, for reasonable attorney fees and expenses incurred as a result of his misconduct. Bowman shall make this payment to Guidant no later than seven (7) days from the date of this Order.

**IT IS SO ORDERED.**

Dated: October 10, 2006

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court